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November 5, 2002

Via FEDEX
Mr. J. Tyler Carlson
Western Area Power Administration
Desert Southwest Regional Manager
615 S. 43rd Avenue
Phoenix, AZ 85005

Dear Mr. Carlson:

Please find enclosed our report to the Imperial Irrigation District to accompany their comments, submitted under separate cover, on the proposal of the Western Area Power Administration to re-market power from the Parker-Davis Project ("Project"), as published in the *Federal Register*, Volume 67, Number 153 on Thursday, August 8, 2002. We would appreciate you ensuring that this report is attached to the main IID comments.

Sincerely yours,



Donald R. Allen

cc: Imperial Irrigation District

November 5, 2002

MEMORANDUM

TO: Imperial Irrigation District

FROM: Donald R. Allen and Paul M. Breakman

RE: Report on Imperial Irrigation District's Allocation of Power under the Parker-Davis Project

In the context of the Western Area Power Administration's ("Western")^{1/} proposed long-term extension of allocations of power from the Parker-Davis Project,^{2/} a question has arisen regarding Western's allocation of Parker-Davis power to Imperial Irrigation District ("IID").^{3/} Specifically, a representation has

^{1/} The Western Area Power Administration, which was created pursuant to the authority of the Department of Energy Organization Act of 1977, succeeded to the power marketing function of the Department of the Interior's Bureau of Reclamation. Western's absorption of a portion of the Bureau of Reclamation's power and energy functions led to a division of authority in the administration of Interior's power contracts. Western is the marketing agent for power generated by plants operated by the Bureau of Reclamation, the Corps of Engineers, and the International Boundary and Water Commission.

^{2/} See Doc. No. 15 herein. Current Parker-Davis long-term, firm electric service contracts, including that of IID, are set to expire on September 30, 2008. See Doc. No. 14 [52 FR 28333 (July 29, 1987), as corrected by 57 FR 54788(Nov. 20, 1992)] Western is proposing to extend a major portion of existing firm power sales commitments for 20 years beyond the existing termination date. 67 FR 153 (August 8, 2002)

^{3/} As a state municipal entity, IID is a "preference" customer of the Federal Government, and receives power generated from the Parker-Davis Project on a "preferred" basis. The Reclamation Project Act of 1902 (Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 391), 1 F.Recl.RL.A. 31)) which authorized the Department of the Interior to undertake irrigation and reclamation projects on an extensive scale in the 17 western states, did not provide for the production of electric power. Nevertheless, as an incident to construction of project features, it was

footnote cont'd on next page

been made that 15 MW of IID's 30 MW Parker-Davis Project power allocation is subject to reduction/recapture by Western.^{4/}

While it is factually correct that the 1948 Allocation (as defined below) and the ensuing 1950 Contract for Electric Service^{5/} both contain a proviso for

frequently necessary to construct small power plants to provide power for construction purposes. It was soon recognized that many dams and canal drops located at Federal Reclamation projects presented opportunities for the installation of hydroelectric power plants.

The 1902 Reclamation Act was supplemented by Section 5 of the Act of April, 1906 (34 Stat. 117; 43 U.S.C. 522; 1 R.Recl.R.L.A. 111). The 1906 Act authorized the Secretary of the Interior to develop this power potential on Reclamation projects through installation of power facilities or through the lease of the power privileges to others who would install facilities. The 1906 Act also established two basic policies which have persisted to this day: (1) net power revenues derived from such leases are credited against the cost of the project, thus reducing the repayment obligation which users of water provided from the Reclamation projects must repay to the Government, and (2) that preference in the sale or lease of power was to be given to municipal purposes (later broadened to include all public agencies and cooperatives).

^{4/} In open, public information meetings with Western, Attorney Michael A. Curtis, on behalf of undisclosed entities allegedly qualified to receive allocations of Parker-Davis power, has maintained that 15,000 kilowatts of IID's allocation of Parker-Davis power should be withdrawn from, among others, IID. In support of his claim, Mr. Curtis appears to rely exclusively on a 1948 allotment of Davis power, as outlined in a June 3, 1948 Memorandum from the Bureau of Reclamation to the Secretary of the Interior (as approved by the Secretary of the Interior on June 23, 1948) (Doc. No. 5, herein). Specifically, Mr. Curtis has made reference to a footnote to Table 3 of the 1948 Memorandum entitled "Allocation of Davis power (kilowatts)," and concluded that 15,000 kilowatts of IID's allocation (under the Parker-Davis Project) is recapturable from IID by Western because IID has long-since placed the Pilot Knob power plant into operation. The referenced footnote to the 1948 memorandum states that such power is "subject to recapture by the Bureau if and when the Imperial Irrigation District places the proposed Pilot Knob power plant in operation." The effects of this footnote are discussed below in detail.

^{5/} *Contract for Electric Service to Imperial Irrigation District*, by and between the United States Department of the Interior, Bureau of Reclamation and Imperial
footnote cont'd on next page

reduction/recapture of up to 15 MW of IID's allocation of Davis power,^{8/} IID satisfied the Bureau of Reclamation's condition on such allocation as early as 1954 by demonstrating its need for the full Parker-Davis power allocation. The consequence of satisfying the Bureau's condition was that as of 1954, IID qualified for its full 30 MW allocation of Davis power. No further condition has ever been placed on IID's allocation. The purpose of this memorandum is to set forth the factual record upon which IID's 30 MW allocation was and is based.

A. Factual Analysis and Background

On June 23, 1948, the Secretary of the Interior approved an allocation of Davis Dam power to IID based on a Memorandum from the Commissioner of the Bureau to the Secretary of the Interior, dated June 3, 1948 (collectively, the "1948 Allocation"). The 1948 Allocation specifically afforded the Bureau the right to "recapture" 15,000 kilowatts of the allotment "if and when [IID] places the proposed Pilot Knob Power Plant in operation."^{7/} The 1950 Electric Service Contract, negotiated and executed as a result of the 1948 Allocation to IID^{8/}, reserved a 15,000 kilowatt "reduction" provision similar to that provided by the 1948 Allocation. However, the Department of the Interior's discretion to reduce IID's 30 MW power allocation was circumscribed by IID's right to establish its need for the full 30 MW.^{9/}

Irrigation District, dated September 26, 1950, Contract No. 176r-638 ("1950 Electric Service Contract"). (Doc. No. 5).

^{6/} Each document provided for recapture/reduction, respectively, of Davis power "if and when" IID places the "proposed Pilot Knob Powerplant in operation."

^{7/} See Footnote 2 to Table 3 of the 1948 Allocation entitled "Allocation of Davis power (kilowatts)." (Doc. No. 2).

^{8/} Implementation of the 1948 Allocation was subject to the execution of an acceptable contract. The 1950 Electric Service Contract is that contract. (Doc. No. 5).

^{9/} See Section 7(b) of the 1950 Electric Service Contract (Doc. No. 5) which provides:

Provided, further, That the United States may reduce the contract rate of delivery to 15,000 kilowatts, and the aforesaid fractions 36,000/225,000 and 30,000/180,000 to 15,000/225,000 and 15,000/180,000 respectively if and when the Contractor places the
footnote cont'd on next page

The recapture/reduction provision was originally included in the 1950 Electric Service Contract as a result of the Bureau's skepticism about IID's need for power from both the Davis Dam project and the Pilot Knob plant. The Bureau's rationale can be construed from the 1948 Allocation,^{10/} the 1950 Electric Service Contract,^{11/} and an April 14, 1950 letter from M.J. Dowd, IID's consulting engineer, to the President of IID, Evan T. Hewes (the "Dowd Letter"). The most complete and contemporaneous record of the parties' intention is set forth in the Dowd Letter. In his letter, Mr. Dowd recalls the negotiation he had with Bureau personnel, stating that he "raised all the points [he] could in favor of [IID's] request for an elimination of the reduction provision in its entirety," but that the Bureau, even though seemingly sympathetic, was "not interested in selling Federal power to either a public or private agency if such power was to be in large part sold to another utility." Further, the Bureau apparently stated that, "if and when [IID] is ready to operate the Pilot Knob plant" it could show its need for both the Davis power allocation and the Pilot Knob power, "there would be no question of [IID] being able to retain [the entire 30,000 kilowatt allocation]."^{12/}

IID did establish its need for its full 30 MW allocation of Davis power four years after signing the original 1950 contract. In anticipation of construction of

proposed Pilot Knob Powerplant in operation; Provided, further, That the United States acting by and through the contracting officer will, at the written request of the Contractor made not more than 30 months prior to the time said powerplant is scheduled to be placed in operation by Contractor, hear and consider the views of the Contractor as to its needs for power and plans for the disposal thereof, and will within six months after receipt of such request notify the Contractor of its decision to make or not to make such reduction in the contract rate of delivery.

^{10/} The 1948 Allocation provided that the Pilot Knob powerplant and the 15,000 kilowatts of Parker power "would make ample hydroelectric capacity available" to IID. (Doc. No. 2).

^{11/} The 1950 Electric Service Contract contained a provision that obligated the Bureau to hear and consider IID's "needs for power and plans for disposal thereof," prior to any reduction of IID's allocation. (Doc. No. 5)

^{12/} Doc. No. 3.

the Pilot Knob plant, IID by letter dated July 9, 1954^{13/} asserted its necessity to retain the 30,000 kilowatts of Davis power and requested a hearing pursuant to Section 7(b) of the 1950 Electric Service Contract.^{14/} In the July 9, 1954 letter, IID informed the Bureau that IID's estimates (as stated in its 1948 application for Davis power^{15/}) for the year 1955 of 79,000 kilowatts, with net energy for load at 418 million kilowatt-hours, "were much too conservative." According to IID, in 1953 the system peak load had reached 77,300 kilowatts, and net energy for load was actually 407 million kilowatt-hours. In 1954, the system peak load had reached 86,500 kilowatts; the revised estimates for 1955 contemplated a peak load increase to 93,800 kilowatts; and the estimate for 1957 (the year in which the Pilot Knob plant was scheduled for initial operation) contemplated a peak load of 119,000 kilowatts. IID's firm generating capability for 1957, including the full 30,000 kilowatts of Parker-Davis power and the Pilot Knob plant, were estimated to be only 115,800 kilowatts,^{16/} a nearly 4,000 kilowatt shortfall.

IID's "hearing request" was granted without the need for further proceedings. By letter to IID dated September 10, 1954, the Bureau acknowledged that IID had satisfied the Bureau's condition of demonstrating its need for Davis power and had thereby satisfied the condition on the 15,000 kilowatt portion of the allocation.^{17/} The Bureau found:

As a result of the review of your letter of July 9, 1954 by this and our Washington Office I have been authorized by the Department to advise you that the rate of delivery of 30,000 kilowatts of power under [your contract] will remain in effect until the termination of that contract on December 31, 1970, or such earlier time as may be the case thereunder.

The Department of the Interior reassured IID of the dependability of its full 30 MW allocation some six years later in connection with its consolidation of the Davis Dam and Parker Dam projects. As part of Congress' desire to effect

^{13/} Doc. No. 6.

^{14/} See *supra* footnote 8.

^{15/} Doc. No. 1.

^{16/} *Id.*

^{17/} Doc. No. 7.

economies and increased efficiency in the operation and maintenance of the projects and of accounting for the return of reimbursable costs to the Government, the Parker Dam power project and the Davis Dam power project were consolidated in 1954 into a single project.^{18/} In order to facilitate Congress' goal of joint marketing and administration of Parker and Davis power, the Bureau decided to terminate IID's Davis power contract (the 1950 Electric Service Contract) as of December 31, 1962.^{19/} The contract was originally scheduled to run until December 31, 1970. The October 8, 1959 Letter informed IID that power generated at Parker and Davis powerplants would be reallocated and that "continuity of the power supplies presently available to the preference customers [would] be a major objective in such allocation."^{20/}

In an apparent attempt to relieve IID's concerns about the Parker-Davis power reallocation, on January 7, 1960 the Bureau sent IID a follow-up letter to the October 8, 1959 Letter, and stated:

Although it is not possible for us to make an immediate final allotment of power to customers, we wish to alleviate as much of your doubt as possible. We assure you at this time that power and energy will be allotted to you in an amount at least equal to the amount stated in your present contract.^{21/}

The effect of this letter was that IID's allocation of 30,000 kilowatts, as well as the Bureau's recognition of IID's power requirements,^{22/} were preserved on a forward-going basis.

^{18/} The Parker Dam and Davis Dam power projects, authorized and constructed separately, were consolidated into the Parker-Davis Project by Act of May 28, 1954 (Public Law 373, 83rd Congress, 68 Stat. 143). The Parker-Davis Project is comprised of Parker and Davis Dams, on the Colorado River below Hoover Dam, power plants at each of these dams, and the associated transmission system.

^{19/} See Letter to IID from the Bureau of Reclamation, dated October 8, 1959 (the "October 8, 1959 Letter") (Doc. No. 8).

^{20/} *Id.*

^{21/} Doc. No. 10.

^{22/} See Doc. No. 7.

B. Conclusion

Since the year 1954, when IID satisfied the Bureau's recapture/reduction condition by demonstrating its power requirements, IID's firm electric service contracts for Parker-Davis power have consistently allocated at least 30 MWs of nonwithdrawable power to IID under the Parker-Davis project.^{23/} There is no basis anywhere in the record of Parker-Davis power allocations to support any action by Western to subject IID's allocation of Parker-Davis power to any special "recapture" or reduction, as has been suggested during various public information and comment meetings relating to Western's application of Parker-Davis power. Any such action singling out IID's 30 MW power allocation would constitute a violation of IID's right to due process under the Administrative Procedure Act.^{24/}

^{23/} IID's allocation in 1973, 1975 and again upon reallocation in 1976, provide specifically that none of IID's allocated Parker-Davis power is subject to recapture/withdrawal. (See Doc. Nos. 11, 12 and 13). Further, IID's current contract with Western, negotiated upon publication of final allocations in the Federal Register back in 1987 (see 52 FR 28333, Doc. No. 14, herein), also provides for 30,000 nonwithdrawable kilowatts of power under the Parker-Davis project.

^{24/} 5 USCS § 702 (2002) ("A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.")

The following table outlines the documents that have been obtained and reviewed in connection with the above analysis.

Doc No.	DOCUMENT	RELEVANT PROJECT	DATE-SHORTCITE	CITATION, IF ANY AND DATE	RELEVANCE
1	Application of IID for Davis Dam Power	Davis Dam	48-03-24	March 24, 1948	Application requesting 15,000 kilowatts of Davis Dam power
2	Davis Dam Allocation of Energy -- Memorandum from Bureau of Reclamation to Secretary of Interior *Original Letter* See Doc. No. 7	Davis Dam	48-06-23	Dated June 3, 1948	Provision for the recapture of 15,000 kilowatts of Davis power when/if the Pilot Knob power plan goes into operation.
3	Letter from MJ Dowd (Consulting Engineer) to IID President	Davis Dam	50-04-14	April 14, 1950	Letter stating that the rationale for the reduction provision -- "Their position was that the Government was not interested in selling Federal Power to either a public or private agency if such power was to be in large part sold to another utility . . ."
4	Letter from Bureau of Reclamation (Regional Director) to IID	Davis Dam	50-05-01	May 1, 1950	Letter informing IID that an additional provision has been added to the Davis power contract -- "... the U.S. will . . . hear and consider views . . . as needs for power . . ."
5	Contract for Electric Service	Davis Dam	50-09-26	September 26, 1950	Original contract, indicating 15,000 kilowatts are subject to reduction
6	Letter from IID to Bureau of Reclamation	Davis Dam	54-07-09	July 9, 1954	Request for hearing on power needs in order to retain full allocation of 30,000 kilowatts
7	Letter from Bureau of Reclamation to IID	Davis Dam	54-09-10	September 10, 1954	Letter authorizing delivery to IID of 30,000 kilowatts of Parker-Davis power
8	Letter from Bureau of Reclamation to IID	Davis Dam	59-10-08	October 8, 1959	Notice of termination of power Contract, stating that Parker-Davis power will be reallocated
9	Letter from IID to Bureau of Reclamation	Davis Dam	59-12-10	December 10, 1959	Letter indicating IID's growing power needs in light of reallocation
10	Letter from Bureau of Reclamation to IID	Davis Dam	60-01-07	January 7, 1960	Letter to IID assuring that "power and energy will be allotted to you in an amount at least equal to the amount stated in your present contract."
11	Parker-Davis Power Contract ^{25/}	Parker-Davis Dam	73-04-01	Amount under contract as of April 1, 1973	Lists allocated Parker-Davis Power effective as of April 1, 1973

^{25/}

See "Updating The Hoover Dam Documents, 1978", adopted by the United States Department of the Interior, Bureau of Reclamation (page 56 and Appendix 301).

Doc. No.	DOCUMENT	RELEVANT PROJECT	DATE-SHORTCITE	CITATION, IF ANY AND DATE	RELEVANCE
	[Table reference from "Updating The Hoover Dam Documents, 1978", s published in "Updating The Hoover Dam Documents, 1978" by the Bureau of Reclamation]			"Updating The Hoover Dam Documents, 1978", published in March, 1978 by the Bureau of Reclamation	<u>Imperial Irrigation District</u> <u>Firm</u> ^{26/} <u>Recapturable</u> Summer: 30,055 kw 0 kw Winter: 22,535 kw 0 kw Contract No. 14-06-300-1301 None of IID's allocation is listed as withdrawable/recapturable
12	Parker-Davis Power Contract ^{27/} [Table reference from "Updating The Hoover Dam Documents, 1978", s published in "Updating The Hoover Dam Documents, 1978" by the Bureau of Reclamation]	Parker-Davis	75-07-01	Amount under contract as of July 1, 1975 "Updating The Hoover Dam Documents, 1978", published in March, 1978 by the Bureau of Reclamation	Lists allocated Parker-Davis Power effective as of July 1, 1975 <u>Imperial Irrigation District</u> <u>Nonrecapturable</u> <u>Recapturable</u> Summer: 30,055 kw 0 kw Winter: 22,535 kw 0 kw Contract No. 14-06-300-1301 None of IID's allocation is listed as withdrawable/recapturable
13	Reallocation of Parker-Davis Power	Parker-Davis	76-04-01	40 FR 66, as published in "Updating	Lists reallocated Parker-Davis Power effective as of April 1, 1976

^{26/} The term "Firm" in this context is equivalent to "nonwithdrawable." The Parker-Davis Project "withdrawable" capacity and associated energy is defined as "power that is reserved for United States priority use, but not presently needed." See Doc. No. 29 herein (52 F.R. 28333; July 29, 1987). According to Western's 1987 power allocation, "[w]hen priority-use power is requested, Western will substantiate that the power to be withdrawn will be used for the purposes specified in the [Conformed General Consolidated Power Marketing Criteria published in the Federal Register (49 FR 50582) (the "1984 Marketing Criteria")]] and then, upon a 2-year written advance notice, Western may withdraw the necessary amount of power on a pro rata basis. Withdrawals of power may be made until the total amount of power reserved for priority-use purposes is fully withdrawn." *Id.* As defined in the 1984 Marketing Criteria, "[p]ower reserved for United States priority use is capacity and energy which is reserved for Federal Reclamation project use, and irrigation pumping on certain Indian lands." See 49 FR 50582 (December 28, 1984).

^{27/} *Id.* at pages 61-63.

LINE	EVENT	DATE	DESCRIPTION	REFERENCE
			The Hoover Dam Documents, 1978" by the Bureau of Reclamation	<p><u>PRESENT ALLOCATION</u> <u>Imperial Irrigation District</u></p> <p><u>Permanent</u> <u>Withdrawable</u> Summer: 30,055 kw -- kw</p> <p><u>FINAL REALLOCATION (kW)</u> <u>Imperial Irrigation District</u></p> <p><u>Permanent</u> <u>Withdrawable</u> Summer: 32,500 kw -- kw</p> <p>None of IID's allocation is listed as withdrawable/recapturable</p>
14	Final Allocation Criteria and Allocations of Capacity and Associated Energy From the Parker-Davis Project	Parker-Davis	87-07-29	<p>52 FR 28333 (July 29, 1987), as corrected by 57 FR 54788(Nov. 20, 1992)</p> <p><u>Imperial Irrigation District</u></p> <p><u>Nonwithdrawable</u> <u>Withdrawable</u> Summer: 32,550 kw 0 kw Winter: 26,300 kw 0 kw</p>
15	Notice of Proposal of Western Area Power Administration, announcing its Post-2008 remarketing effort of for the Parker-Davis Project	Parker-Davis	2002-08-07	<p>67 FR 153</p> <p>July 26, 2002; Published August 8, 2002; filed Aug. 7, 2002</p> <p>Current Parker-Davis long-term, Firm Electric Service ("FES") contracts, including that of IID, are set to expire on September 30, 2008. Western is proposing to extend a major portion of existing firm power sales commitments for 20 years beyond the existing termination date. Western is seeking comments on their proposal.</p> <p>Michael Curtis' allegations have arisen in the context of this proceeding.</p>

Doc. No. 1

100-155750
XXXXXXXXXXXX
XXXXXXXXXXXX
El Centro, California
March 24, 1948

C
O
P
Y
Mr. E. A. Moritz, Regional Director
Bureau of Reclamation
Boulder City, Nevada

Dear Mr. Moritz:

Re: Application for Davis Dam Power
by Imperial Irrigation District

In response to your letter of February 27, I am enclosing application of Imperial Irrigation District for 15,000 kilowatts of Davis Dam power, to be delivered at Drop 4 on the All-American Canal. This application is being made under authority granted by resolution of our Board of Directors dated November 19, 1946, certified copy of which was submitted to you by my letter of November 20, 1946 and acknowledged by your letter of January 24, 1947.

May I call your attention to the note which we have placed at the bottom of the application. As we interpret our existing contract with you for Parker Dam power (Contract No. 12r-11729), if, as provided in Article 10 of the contract, it becomes necessary for you to discontinue or reduce the maximum delivery of power and energy at any time after the initial ten-year period, then, in accordance with the second paragraph of Article 10, you will immediately replace it by an equal amount of power and energy from Davis Dam. Such replacement power would, of course, be in addition to the power for which the enclosed application is made. We assume that in making any new allocations of Davis Dam power, sufficient capacity will be reserved to fully meet the replacement requirements of all contracts for Parker Dam power such as ours.

If the foregoing is not in accordance with your interpretation and intentions, will you please so advise us, as such would affect the present application we are submitting for Davis Dam power.

Yours very truly

M. J. DOWD
Consulting Engineer

MJD:HMF
Enclosure
REGISTERED MAIL
Copies to Messrs. Howe, Horton, Weiss, and Howe

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Davis Dam Project

Application for Electric Power and Energy

March 24, 1948
Date

Imperial Irrigation District, El Centro, California
Name of Organization

M. J. Dowd, Consulting Engineer
Name and Title of Official to whom correspondence should be directed.

Public Agency (Agency of the State of California)
Type of Organization: Municipality, Public Corporation, Public Agency,
Cooperative, Nonprofit Organization, other utilities.

Point of Delivery on Davis or Parker transmission system: Substation _____

<u>Drop No. 4 on All-American Canal, Imperial County, California</u>			
<u>Town</u>	<u>County</u>	<u>State</u>	
<u>3</u>	<u>17 S.</u>	<u>17 E.</u>	<u>S.E.B. & M.</u>
<u>Section</u>	<u>Township</u>	<u>Range</u>	<u>Meridian</u>

Delivery Voltage: 161 kv (transmission voltage)

Power and Energy Desired:

Maximum Rate of Delivery 15,000 Kilowatts

Annual Energy Requirements 80,000,000 Kilowatthours

Estimated Total System Load:	<u>1950</u>	<u>1955</u>
Peak Load - Kilowatts	<u>65,000</u>	<u>79,000</u>
Net Energy for Load - Kilowatthours	<u>345,000,000</u>	<u>415,000,000</u>

Note: The above figures denoting energy desired ~~do not~~ (X) include your organization's present contract for Parker Dam power and energy.

A separate application form should be completed for each point of delivery desired.

It is assumed that under the terms of the District's Parker contract, any reduction in delivery of Parker power will be fully replaced by additional Davis power.

Doc. No. 2

COPY
UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
WASHINGTON 25, D.C.

In reply refer to:
Attention 630

JUN 3-1948

Memorandum

To: Secretary J. A. Krug
(Through Division of Power)

From: Commissioner

Subject: Proposed allocation of Davis power and energy to applicants therefor - Davis Dam Project.

Following your approval on February 10, 1948, of the Interim Schedule of Rates for Wholesale Firm Power Service (Schedule R3-F3) for the Davis Dam Project, Regional Director Moritz dispatched a letter to all prospective applicants for Davis power announcing your approval of the schedule of rates and requesting completion of an application form by March 31, 1948. The letter, which was dated February 27, 1948, is enclosed and marked Exhibit A.

In response to the announcement and request, Mr. Moritz received applications for Davis power in a total amount far in excess of the 180,000 kilowatts that is expected to be available at load centers from the Davis Power Plant. The individual applications and a summary thereof by applicants are enclosed and marked respectively Exhibits B and C. A summary of the applications filed, grouped by States, is shown in Table 1.

Table 1

Summary of Applications Filed

(Power in kilowatts and energy in millions of kilowatthours annually)

:Classification of Prospective Customers:							
State	Preference		Non-Preference		Total		
	Power	Energy	Power	Energy	Power	Energy	
Arizona	501,325	2,394	125,500	584	626,825	2,978	
California	222,480	1,149	66,200	397	288,680	1,546	
Nevada	60,000	350	—	—	60,000	350	
Utah	10,300	33	—	—	10,300	33	
Total	794,105	3,926	191,700	921	985,805	4,907	

Table 2 shows the summary of applications in Table 1 after elimination of the apparent duplications.

Table 2

Summary of Applications after Elimination of Apparent Duplications
(Power in kilowatts and energy in millions of kilowatthours annually)

Classification of Prospective Customers:							
State	Preference		Non-Preference		Total		
	Power	Energy	Power	Energy	Power	Energy	
Arizona	300,280	1,193	22,500	101	322,780		1,294
California	222,480	1,149	66,200	397	288,680		1,546
Nevada	60,000	350	—	—	60,000		350
Utah	10,300	33	—	—	10,300		33
Total	593,060	2,725	88,700	498	681,760		3,223

In view of the applications for Davis power far exceeding the amount which will be available, the power allotment of Davis capacity becomes a difficult problem. In considering this problem the Bureau has used the following priorities:

- (a) Fulfillment of commitments for power from other Colorado River sources in present contracts for Parker power.
- (b) Federal Agencies within the Department of the Interior.
- (c) Other Federal Agencies.
- (d) Certain small contractors which have preference under Reclamation Law and also are now served directly by the Parker power system.
- (e) Other applicants which have preference under Reclamation Law.
- (f) All other applicants.

Using these priorities and limiting allotments to applicants which could be either served directly by the Parker-Davis transmission system, which has been described to the Congress in requests for appropriations, or applicants in the State of California which manifestly could make transmission arrangements with other agencies, the Bureau has prepared and recommends the allotment shown in Table 3.

Table 3

Allocation of Davis Power
(kilowatts)

(a) Fulfillment of commitments in contracts for Parker power:

Gila Project	2,500
Bagdad Copper Corporation (Contract I2r-13,919)	4,000
Colorado River Indian Irrigation Project (Contract I1r-1,398)	2,000
Imperial Irrigation District (Contract I2r-11,729)	15,000
San Carlos Indian Irrigation Project (Contract I1r-1,329)	5,000
Tucson Gas, Electric Light and Power Co. (Contract I2r-11,533)	<u>15,000</u>
Subtotal	43,500

(b) Federal Agencies within the Department of the Interior:

San Carlos Indian Irrigation Project	9,000
--------------------------------------	-------

(c) Other Federal Agencies:

Army Engineer Board, Imperial Dam, Arizona	3,000
Army Air Force Stations, California	15,000
Veterans Administration Center, Whipple, Arizona	225

(d) Certain small contractors which have preference under Reclamation Law and also are now served directly by the Parker power system:

Gila Valley Power District	2,000
Yuma Irrigation District	1,500

(e) Other applicants which have preference under Reclamation Law:

State of Nevada through its Colorado River Commission	45,000 ^{1/}
Imperial Irrigation District	15,000 ^{2/}
State of Arizona through the Arizona Power Authority	<u>45,775 ^{3/}</u>

Total 180,000

Notes:

- ^{1/} To be temporarily sold by the Bureau of Reclamation, as explained in the text.
- ^{2/} Subject to recapture by the Bureau if and when the Imperial Irrigation District places the proposed Pilot Knob Power Plant in operation.
- ^{3/} Includes 14,000 kilowatts subject to withdrawal by the Bureau upon two years' notice for use in the operation of the Gila Project.

After providing for the immediate requirements for operation of the pumping plants of the Gila Project, the requirements of applicants having rights to power from other sources in contracts for Parker power to the extent of the commitments in such contracts, and the applications of the San Carlos Indian Irrigation Project, the Army Engineer Board, the Veterans Administration Center, and two districts now being served by the Parker power system, aggregating in total 59,225 kilowatts, there remains 120,775 kilowatts for allotment to other applicants. Of this amount, 45,000 kilowatts is recommended for the State of Nevada (Nevada has applied for 60,000 kilowatts or one-third of all Davis power), and 30,000 kilowatts is recommended for customers in the State of California. All of the remaining 45,775 kilowatts is recommended to be allotted to the State of Arizona because the most desperate need for power in the Davis market area, which has been described to the Congress as central and southern Arizona, southern Nevada, and southern California, is in Arizona.

It is understood that the State of Nevada does not contemplate immediate need for Davis power but is conducting a campaign for introduction of additional industries in the Basic Magnesium Plant predicated on the availability of Davis power to supplement its power from Hoover Dam. In view of this situation, it is recommended that the allocation to the State of Nevada be temporarily sold by the Bureau to the municipalities of Los Angeles, Burbank, Glendale and Pasadena subject to withdrawal by the State of Nevada upon one year's notice in such increments as the State may desire. Such power would be apportioned among the four California municipalities in the ratio of the amounts requested by those municipalities and withdrawals would be made in the same proportion.

One-half of the 30,000 kilowatts allotted for use in the State of California is recommended for the Imperial Irrigation District, a preference customer. Since the capacity of the proposed Pilot Knob Power Plant and the plants at the Drops on the All-American Canal plus 15,000 kilowatts of Davis power under the commitment in the District's contract for Parker power would make ample hydroelectric capacity available to the District, it is recommended that the 15,000 kilowatts of Davis power over and above the 15,000-kilowatt Parker contract commitment be subject to recapture by the Bureau if and when the District places the proposed Pilot Knob Power Plant in operation.

The Arizona Power Authority has been allotted all of the 45,775 kilowatts recommended for Arizona to be made available to other applicants which have preference under Reclamation Law. After elimination of apparent duplication, such other preference applicants have applied to the Bureau for 228,000 kilowatts of Davis power. The Authority is in a better position than the Bureau to apportion such 45,775 kilowatts among all such applicants because the Authority can supplement Davis power and energy with its Hoover Dam energy

for which it has not yet exercised its right to take. Such allotment of the entire amount to the Authority was recommended to you by the Arizona Electric Coordinating Committee in its letter of March 26, 1948, and such allotment has been advocated by representatives of the Rural Electrification Administration. It will be the Bureau's proposal in contracting with the Authority to require it to observe the preferences established in Reclamation Law in the resale of Davis power. It must be pointed out, however, that the preference provisions governing disposition of power by the Authority (Section 6 (b) of the Arizona Power Authority Act, as amended) are not in all respects identical with the preference provisions of the Reclamation Law, although the Authority is itself a preference customer under Reclamation Law. Accordingly, without an amendment to its Act, the Authority could lawfully follow the preference provisions of Reclamation Law only to the extent that such law is consistent with the Authority's powers under its own Act.

In order to assure the use in Arizona of Davis power which will be required for the operation of the pumping plants of the Gila Project as its development proceeds but which is not required at the present stage of development of the Project, such increased requirements of the Project for Davis power have been included in the 45,775 kilowatts allotted to the Arizona Power Authority. However, it is recommended that 14,000 kilowatts of the 45,775 kilowatts be subject to withdrawal by the Bureau upon two years' notice in such increments as are required for use in the operation of the Gila Project.

A detailed analysis of the applications granted or rejected, including the amounts thereof and the reasons therefor, is enclosed and marked Exhibit D.

It is recommended that you approve the allotment of Davis power shown in Table 3 subject to the negotiation of acceptable contracts. Upon receipt of such approval the Bureau will immediately undertake negotiation of such contracts.

Enclosure 308.

(Sgd.) Michael W. Straus

I concur JUN 16 1948

/s/ Walton Seymour
Director, Division of Power.

Approved: JUN 23 1948

I concur 6/17/48

/s/ J. A. Krug
Secretary of the Interior.

/s/ W.E.W.
/s/ O.L.C.

Copy for Division of Power.

cc-Reg.Dir., Boulder City, Nev.
Reg.Csl., Los Angeles, Calif.

(Orig. to Mr. Dermody; copies to Messrs. Hewes, Horton, Weiss and Dowd)

Doc. No. 3

36
April 14, 1950

Mr. Evan T. Howes, President
Imperial Irrigation District
El Centro, California

Dear Mr. Howes:

Yesterday afternoon I had a meeting with Mr. Baker, who is Mr. McPhail's assistant, and a Mr. Smith from the legal section of the Bureau of Reclamation, relative to the changes we had requested of Regional Director Moritz, in the March 9, 1950 draft of the proposed Davis Dam power contract. Mr. McPhail had planned on being with us but at the last minute was called to a hearing before the Senate and had to leave.

Mr. Moritz had forwarded our letter of March 23, together with his comments, to the Washington office. I will discuss the points we raised in the order stated in our letter of March 23.

1. Reduction to 15,000 kilowatts.

In an endeavor to meet our request that the provision whereby our contract may be reduced to 15,000 kilowatts when we put the Pilot Knob Power Plant in operation, Mr. Moritz had suggested that at page 3 of the contract in the 6th line from the bottom after the sentence ending with the word "operation" the following provision be added:

"...; Provided further, That the United States will, at the written request of the Contractor made not more than 30 months prior to the time said power plant is scheduled to be placed in operation by the Contractor, hear and consider the views of the contractor as to its needs for power and plans for the disposal thereof, and will within six months after receipt of such request notify the Contractor, hear and consider the views of the contractor as to its needs for power and plans for the disposal thereof, and will within six months after receipt of such request notify the Contractor of its decision to make or not make such reduction in the contract rate of delivery."

65.

Mr. Evan T. Hewes
April 14, 1950

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I raised all of the points I could in favor of our request for an elimination of the reduction provision in its entirety. While the Bureau officials seemed somewhat sympathetic to our position, they are unwilling to go any farther than had been suggested by Mr. Moritz. Their position was that the Government was not interested in selling Federal power to either a public or a private agency if such power was to be in large part sold to another utility. They stated that if and when we are ready to operate the Pilot Knob plant we could show that we could also use for the most part for our own requirements the 15,000 kilowatts in question from Davis Dam there would be no question of our being able to retain it. However, they would go no further than stated in the suggested ~~provision~~ ~~additional~~ provision.

While in this as well as other questions we would have the right to appeal to the Secretary of the Interior, it is my suggestion, after considering all phases, that we accept the proposed provision and let the matter rest at that point.

2. Reduction in Parker Contract Energy Rate.

Our request for the addition of a subarticle at the end of Article 8 of the draft contract, by which a reduction in the Parker energy rate would be granted us from and after the date metering commences at Knob Switching Station, proved to be unacceptable to either Moritz or the Washington office.

I am not certain as to Mr. Moritz's position as I did not have the opportunity to see his letter to Washington. In any event, the people here were not in favor of our request, although I believe that they recognized that there was a basis for our argument. Their decision seemed to be based on the idea that a reduction, if granted, would be small in amount and would not continue over a very long period and that the Bureau was installing expensive metering equipment at the Knob Switching Station, no return on which would be received from Parker power revenue.

I pointed out to them that on the other hand they are tying in the second line from Parker Dam into the Gila - Drop 4 Line at Knob and utilizing it from the latter point to the Gila substation, but at the same time requiring us to pay the full cost of this section of the line.

As I say, I believe that they recognized that we had a basis for our request, but the answer was "No". It would be

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April 14, 1950

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my recommendation that we accept this answer.

3. Article 9(d) - Rate Schedules.

I found the officials quite sympathetic to our request and appreciative of the fact, following our discussion, that Imperial was in a rather unique position as compared to almost any other contractor with whom they had dealt. On the other hand, they told me that the same point had been raised in other parts of the country to such an extent that the entire matter was put up for personal review and consideration by Secretary Chapman.

Mr. Moritz had suggested and Bureau officials here are agreeable to recommend the elimination of Article 9(d) and substitute thereof of the following:

"9(d). The Contractor will revise its rate schedules from time to time as may be necessary to comply with the objectives set forth in Article 9(a) hereof and will keep the contracting officer fully informed as to any such revisions. The Contractor shall keep on file with the contracting officer at all times copies of its rate schedules then in effect."

They mentioned several times to me that it should be clearly understood that the fact the change was being recommended by Bureau officials did not necessarily mean that it would be approved by the Secretary. Such would depend to a great extent upon the decision he reached as to general language for a provision to go into all contracts for the sale of Federal power.

They pointed out that if we would be willing to accept the language as it is at present in the draft of March 9, no doubt we would secure earlier action on our contract than if it went before the Secretary with the proposed change. However, I told them that we felt it to be rather important and were not in a position to accept the present language. It seems to me the suggested substitution for Article 9(d) ought to be acceptable to us and I would so recommend.

4. Article 18(b) and Article 18(c).

It seems that even the wording as at present in Article 18(b) and Article 18(c) is not acceptable here and that in place thereof the following is necessary:

"(b) The Contractor shall not discriminate against any employee or applicant for employment because of

Mr. Evan T. Hewes
April 14, 1950

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race, creed, color, or national origin, and shall require an identical provision to be included in all subcontracts; Provided, however, That this clause does not refer to, extend to or cover the business or activities of the Contractor which are not related to or involved in the performance of any part of the work contemplated by this contract. This Article is subject to the provisions of Article 2, Chapter 2, Part 7, Div. 2, of the Labor Code of California."

"(c) In the performance of any part of the work contemplated by this contract, the Contractor shall not employ any person undergoing sentence of imprisonment at hard labor."

Attorney Smith discussed this phase with me and stated that it all stemmed from Executive Orders. You will note that the new language applies to the whole contract in so far as the business or activities of the District are related to (whatever that means) or involved in the performance of any part of the work contemplated by the contract. Just what the work may be I am not sure. As he admitted, these clauses stemmed from a provision designed for Federal construction contracts and, as was the case in so many of the Executive Orders, it was questionable as to its application in a contract such as ours.

He also pointed out that no penalty was provided for a violation of these provisions. Of course, as he said, should we violate the provisions and, upon notice from the Government, fail to correct the violation, it might be that the Government could declare the contract forfeited. He told me that, in so far as he knew, there had never been a case arise under similar clauses in many hundreds of contracts. I might add that the same clauses are written into contracts with the Department of Water and Power and Edison Company. If they can live with these provisions, perhaps we can too.

There is one exception which I should have mentioned in the matter of these provisions, and that is the last sentence of the proposed Article 18(b). I was told that Mr. Moritz stated in his letter that this reference to the provisions of the Labor Code of California was inserted at the request of our District, but as far as the Bureau was concerned they did not require it. I told them I knew nothing of this but I would mention it to you. In other words, if we want the reference in there, the Bureau will put it in, but if for any reason we want it taken out, they

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April 14, 1950

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would just as soon eliminate it.

In further discussion it appeared that these two subarticles could be made applicable to Article 17 only, in the event Article 21 and Article 22 were eliminated from the contract but they could not say whether such elimination would be acceptable to the Government. In my opinion Article 21 is of advantage to us but I cannot see much benefit to us from Article 22. Assuming Moritz and officials here are agreeable to the elimination of both Articles 21 and 22, then we must weigh against that what we feel would be the disadvantages to us from the rewritten Articles 18(b) and 18(c).

I was told that we would have the right, of course, of appeal to the Secretary in this matter, but it would quite likely take at least several years to get a decision since this subject is involved in Executive Orders affecting nearly all of the various departments. Subject to a legal opinion as to its effect on us, I would be inclined to suggest that we accept the proposed revision as shown above.

The Bureau here is writing Mr. Moritz telling of our meeting and also approving the changes in the draft contract which I have indicated here. I told them I would transmit the changes to you for your consideration. I am not too clear as to what the next step will be, but I assume that, after you reach a conclusion in regard to these matters, you would confer again with Mr. Moritz and if there were no disagreement, then the revised contract, including these amendments, would be ready for submission to Secretary Chapman for approval as to form.

I will await further instructions from you in regard to this matter.

Sincerely yours,

M. J. DOWD
CONSULTING ENGINEER

MJD:mb

*Orig - Hewes
cc - Weiss
Hesse*

(Xcopy Gen Ltr)

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APR 15 1950
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Doc. No. 4

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UNITED STATES
DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Region III
Boulder City, Nevada

19/53/16
May 1, 1950

Mr. Evan T. Hewes, President
Board of Directors
Imperial Irrigation District
El Centro, California

My dear Mr. Hewes:

C
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Y
Reference is made to your letter of March 23, 1950,
relative to the proposed contract with your District for the sale
of Davis Dam power and energy.

Your comments on the March 9, 1950, draft of the proposed
contract have been discussed with our Washington office. This dis-
cussion has resulted in a new draft of contract incorporating such
of the suggested changes made in your reference letter as could be
made under the Bureau's established policies for the marketing of
electric power and energy and under the special policies established
by the Secretary for the marketing of Davis Dam power and energy.

You will note that an additional provision has been added
to Article 7(b) of the draft of contract providing " * * * That the
United States will, at the written request of the Contractor made
not more than 30 months prior to the time said powerplant is scheduled
to be placed in operation by the Contractor, hear and consider the
views of the Contractor as to its needs for power and plans for the
disposal thereof, and will within six months after receipt of such
request notify the Contractor of its decision to make or not make
such reduction in the contract rate of delivery."

The Bureau does not believe it is justified in making the
minor rate reduction which your District has requested in the event
the point of delivery for Parker power is changed from the Drop 4
Substation to the Knob Switching Station for a short period of time.

Article 9(d) has been revised as suggested in your reference
letter. The Washington office of the Bureau has no objection to the
article in its revised form, however, the revision will be subject to
Secretarial approval.

Articles 18(b) and (c) have been revised to conform with the latest standard language required in all Bureau contracts and in addition the sentence "This article is subject to the provisions of Article 2, Chapter 2, Part 7, Div. 2, of the Labor Code of California." has been added to Article 18 (b) because it now appears in several contracts between your District and the United States covering the sale of power by the District to the United States.

Enclosed are six copies of the proposed contract designated Region 3 Draft, 4/28/50. Upon notification from you that the terms of the contract are satisfactory and receipt of information necessary to fill out the blanks in Articles 9(c) and 22, it will be forwarded to Washington for final approval of the Commissioner and for the approval of the Secretary as to form. Following approval by the Secretary it will be placed in final form for execution.

Sincerely yours,

E. A. Moritz (signed)

E. A. Moritz
Regional Director

Enclosures 6

cc Ken Files (6-9-50)

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